
(2015) 02 P&H CK 0346
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7244 of 2013

Davender

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32
Industrial Disputes Act, 1947 — Section 10(1)(c), 25-B, 25F, 25-F, 2-A

Citation : (2015) 02 P&H CK 0346

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Mayank Sharma, for the Appellant; Raj Kumar Makkad, D.A.G.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—Industrial Reference No. 283 of 2008 under Section 10(1) (c) read with Section 2-A of the Industrial Disputes Act, 1947 (for short "the Act") has been declined by the learned Presiding Officer, Labour Court, Ambala by her award dated October 07, 2010. Relief of reinstatement has been declined and no compensation in lieu of reinstatement has been granted to the workman who served on daily wages while attached to various Foresters and Forest Guards in the Forest Department at Kaithal and Kurukshetra in the State of Haryana. The period of service rendered was from July 10, 1991 to August 31, 2006 when the petitioner's services were terminated without following the procedure prescribed by Section 25-F of the Act in cases of retrenchment from service.

2. The parties went to trial on the following issues which were framed on August 26, 2009:-

"1. Whether the termination of services of the workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to be reinstated in service with full back wages and all the benefits including the continuity of service? OPW

2. Whether the workman has no locus-standi to file the present claim statement? OPM

3. Whether the claim statement is not maintainable in the present form? OPM

4. Whether the reference is time bar? OPM

5. Whether the workman has no cause of action to file the present claim Statement? OPM.

6. Relief."

3. Evidence was adduced by the parties, both oral and documentary in support of the respective cases with the respondent Forest Department contesting the claim for relief of reinstatement and back wages for wrongful termination.

4. The Court a quo has returned the finding that the petitioner had put in 240 days of service in the preceding 12 calendar months from the date of termination as envisaged in Section 25-B of the Act.

5. In order to prove this issue, the workman filed an application for summoning the record from the management. The application was allowed and the dealing hand was summoned to produce record. Hawa Singh, Clerk appeared and deposed that he had not brought the record since he could not trace it and assured the Court that whenever it is found it will be produced. The witness appeared again and deposed that despite best efforts, the Department was unable to trace the record pertaining to the petitioner. He supported his statement with nothings recorded by the Divisional Forest Officer, Kaithal admitting that the muster rolls, attendance register for the period September October 1991 to August 2006 were not available. In absence of direct evidence the court a quo rightly drew an adverse inference against the management and concluded the issue in favour of the workman. On his part, the workman had produced documentary evidence in the shape of Exs. W-7 and W-8 which revealed through the mouth of the Range Forest Officer, Kaithal appearing as the sole Management Witness MW-1 that in the year 2003 the petitioner had been removed from service and was taken back on duty on a settlement arrived at between the parties which clearly showed that even in the year 2003 the petitioner had completed 240 days of service during the relevant period. The fact remained that on November 01, 2003 there was a settlement between the parties which clinched employment status. From the cross-examination of the witness MW-1 the Court concluded that in the face of the admission of the witness, the record was deliberately withheld. The management stand was falsified in its defence on this score.

6. Having reached this conclusion, the labour court drifted into a digression by fallaciously reasoning that since the workman is a daily wager unable to show that he was appointed on a sanctioned or regular post and his appointment was made without following the prescribed rules and procedure laid down "for such like appointments" then he is disentitled to relief. It was argued by the workman

before the Court a quo that the ruling in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 could not be applied against him since he had not sought regularization of services nor was such a claim included in the terms of reference, which was restricted in the main as to whether the termination was legal and valid. The Labour Court did not agree. It reasoned that the dispute was not whether the workman had completed 240 days of continuous service but was really whether the initial appointment of the workman was made by the competent authority by following the service rules and because those were not followed *stricto sensu* the petitioner's entry to daily wage service was through the back door into Government service. The petitioner has been non-suited by applying the principles in Umadevi case. The Labour Court proceeded on the semantics of Articles 14 and 16 of the Constitution and culled out a large number of rulings, cited and relied upon by the management, to throw out the claim of the petitioner holding him not entitled to any relief. The impugned award has been assailed by the workman while the management has supported its reasons as sufficient to deny relief.

7. I have heard the learned counsel for the parties and have perused the record placed in the writ papers.

8. The decision of the Constitution Bench in Umadevi has been explained and distinguished in its relationship with labour laws in Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 123 FLR 136 : (2009) 11 JT 609 : (2009) 4 LLJ 286 : (2009) 12 SCALE 25 : (2009) 8 SCC 556 : (2009) 13 SCR 937 : (2010) 3 SLR 588 : (2009) 9 UJ 4242 . In paras 35 and 36 in Casteribe, the Supreme Court observed as follows:-

"35. Umadevi (3)1 is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3)1 does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

(emphasis added)

9. I had occasion to bring out the difference and the precedential relationship between Umadevi and Casteribe cases in Khajjan Singh and others vs. State of

Haryana and others, ILR 2014 (2) P and H 363 while examining a bunch of cases from the stand point of discrimination in the background of regularization of services flowing from continuity of service awarded by the Labour Courts and Tribunals to the daily wage workers involved in the litigation. The decision in Casteribe was available to the learned Presiding Officer, Ambala who passed the impugned award on October 07, 2010 and the principles laid down therein ought to have been kept in mind while deciding the lis.

10. More recently, the Full Bench of this Court in LPA No. 754 of 2010 decided on October 10, 2014 titled Municipal Council, Dina Nagar, Tehsil and District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another, laid down the following principles on the moot point which are relevant in the present context, and are quoted:-

"(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement."

11. The Labour Courts would need to keep themselves abreast with the law and apply the principles culled out by the Full Bench in their day to day application in matters coming up before them which will add flavour and meaning content to their awards while dealing with relief which may be granted or denied on a case to case basis.

12. In Hari Palace, Ambala City vs. The Presiding Officer, Labour Court and another, 1979 (2) ILR (Punjab) 243 the Full Bench of this Court in its salutary early ruling opined that when there is violation of the provisions of the Industrial Disputes Act and especially Section 25F thereof, then ordinarily reinstatement should follow unless there are reasons necessitating departure in awarding reinstatement with back wages.

13. The law on the subject is voiced by the Supreme Court in favour of the workmen placed in the circumstances such as the petitioner in several binding precedents including in Harjinder Singh Vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116 : (2010) 124 FLR 700 : (2010) 1 JT 598 : (2010) 2 LLJ 277 : (2010) 1 SCALE 613 : (2010) 3 SCC 192 : (2010) 1 SCC(L&S) 1146 : (2010) 1 SCR 591 : (2010) 2 SLR 15 , Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana), 2010 (3) SLR 663 and Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 SC 2532 : (2011) 130 FLR 337 : (2011) 5 JT 333 : (2011) 3 LLJ 1 : (2011) LLR 785 : (2011) 4 SCALE 631 : (2011) 6 SCC 584 : (2011) 2 SCC(L&S) 153 : (2011) 2 UJ 1612 : (2011) AIRSCW 3455 and as are further explained in Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 that there should not be a mechanical or automatic reinstatement.

14. It was lastly contended by the learned DAG, Haryana appearing for the Forest Department that the workman is guilty of delay and laches in approaching this Court against the award dated October 07, 2010 which was published in December 2010 while this writ petition is filed on April 04, 2013. The petitioner has explained that he could not avail his remedy against the award within reasonable time due to paucity of funds and he was helped financially by his relatives and after clearing his debts he has approached this Court.

15. I would not view delay in the presentation of the present petition as fatal to

the maintainability of the action and rather would opt for a decision on merits. After all, the underlying object of the Industrial Disputes Act, 1947 is to restore industrial peace through the healing touch of adjudication. Poor workers have scant means to pay for expensive litigation in spiraling costs and tall fees demanded by lawyers. They may have to recoup their resources before they venture out looking for a lawyer with sufficient knowledge of labour laws. In *Inder Pal Yadav and Others Vs. Union of India (UOI) and Others*, (1985) 51 FLR 138 : (1985) 2 LLJ 406 : (1985) 1 SCALE 703 : (2005) 11 SCC 301 : (1985) 3 SCR 837 : (1985) 2 SLJ 58 : (1985) 17 UJ 1040 , the Supreme Court promoted a practical view of delay in approaching court observing tellingly three decades ago as follows:-

"5. ..There is another area where discrimination is likely to rear its ugly head. There workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to know at the door of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the Court need not be at comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

16. Therefore, the objection is overruled in favour of the petitioner.

17. What now remains for consideration is what relief the petitioner may be entitled to if the award deserves to be set aside. It is beyond cavil that the petitioner had put in 15 years of service as a daily wage earner and was in continuous service except for the brief period involved in the settlement. In view of the long years of service spent I should think that the present is a fit case for reinstatement with full back wages since for the variety of grievance recorded above, the impugned order cannot be sustained in law. Strong support can be drawn from two judgments of the Supreme Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716 and very recent in *Jasmer Singh v. State of Haryana*, Civil Appeal 346 of 2015 decided on January 13, 2015.

18. This is also not a case where reinstatement should be denied only for the reason that the reinstatement cannot be granted automatically as held in numerous decisions of the Supreme Court but, while Courts are warned against blindly ordering reinstatement, the facts of each case have to be kept carefully in mind, in their cumulative effect and in the totality of circumstances in the matter of grant of relief under the Act. Reinstatement is eminently possible as re-

affirmed by the Full Bench in LPA No. 754 of 2010 decided on October 10, 2014 titled Municipal Council, Dina Nagar, Tehsil and District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another.

19. In this line of thinking, two sorts of relief can be granted in this case. One is reinstatement with full back wages and reinstatement with a cut in back wages for which also there should be good reason where there is a negative factor working against the workman in the net product of the trial proceedings. If reinstatement is to be granted in this case then I think it is also a fit case where the period after the pronouncement of the award and the approach to this Court in the present petition does not deserve to be saddled in its monetary liability on the management and the aforesaid period would thus stand excluded counted from 30 days of the date of publication of the award till the filing of this petition, less by about roughly six months which is taken to be reasonable time to approach this Court against the award. Therefore, six months will be read in favour of the petitioner and full back wages be worked out accordingly, that is from the date of illegal termination till six months after the publication of the award and thereafter from the date of the petition till realization. In doing so, the two periods separated by what has been blacked out by this Court would earn 6% interest simple per annum. This is one model of granting relief in the present case.

20. The second model which also can be adopted is to deny reinstatement and award compensation in lieu thereof in terms of the recent ruling of the Division Bench of this Court in Municipal Council, Dina Nagar case Officer decided on November 29, 2014 in LPA No. 754 of 2010 from where the reference was made to the Full Bench and the broad principles of compensation were laid down where each year of service would account for payment of Rs. 1 lac per year of service rendered before illegal termination in violation industrial law protections. This relief model would entail saddling the management with Rs. 15 lacs for 15 years of continuous service. When this model is adopted it would appear to this Court that a large amount of Rs. 15 lacs would become a windfall which the Court may not countenance in the present set of facts and for good measure refuse to apply the model. I would, therefore, apply the first model [supra] and grant relief accordingly.

21. Consequently, this petition is allowed and the impugned award is set aside with relief in the above terms. Petitioner to take home costs of Rs. 10,000/- to defray expenses of litigation.